

APPROVED

CHAPTER

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BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWO

H.P. 1520 - L.D. 2024

**An Act to Improve the Safety Provided by the Underground
Facilities Protection Law**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the underground facilities protection law affects activities that take place primarily during the building season, which occurs during spring, summer and autumn; and

Whereas, enactment without emergency designation will result in revisions becoming effective after a significant portion of the building season is over; and

Whereas, the Public Utilities Commission is in receipt of a grant to educate the public regarding the requirements of the law and will do so most effectively if the education occurs in the early months of the building season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §3360-A, sub-§1, ¶C, as amended by PL 1997, c. 631, §1, is further amended to read:

C. "Excavation" means any operation in which earth, rock or other material below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes, ~~and except installation and maintenance of signs performed by the Department of Transportation.~~

Sec. 2. 23 MRSA §3360-A, sub-§1, ¶D-1 is enacted to read:

D-1. "Shoulder-grading activity" means highway maintenance work that involves the use of a motorgrader or other suitable construction equipment with a blade on the shoulder of a road to remove accumulated sand, gravel, sod or other material to establish drainage away from the traveled portion of the highway.

Sec. 3. 23 MRSA §3360-A, sub-§1, ¶F, as enacted by PL 1991, c. 437, §1 and affected by §12, is amended to read:

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers or a person that owns underground facilities on its own property for commercial or residential purposes.

Sec. 4. 23 MRSA §3360-A, sub-§2, as enacted by PL 1979, c. 362, §2, is repealed.

Sec. 5. 23 MRSA §3360-A, sub-§3, ¶F is enacted to read:

F. In the case of an excavation involving subcontractors or other arrangements in which more than one entity qualifies as the excavator under this section, the excavator directly responsible for performing the excavation shall ascertain that all notifications required by this subsection and subsections 5, 5-A and 10 are performed.

Sec. 6. 23 MRSA §3360-A, sub-§4, as amended by PL 1999, c. 718, §3, is further amended to read:

4. **Operator response to notice locating facilities.** An underground facility operator shall, upon receipt of the notice provided for in subsection 3-A, advise the excavator of the location and size of the operator's underground facilities and all underground facilities used in furnishing electric or gas service that are connected to the operator's facilities, located in the public way and known to the operator in the proposed excavation area by marking the location of the facilities with stakes, paint or by other identifiable markings. The marking must identify a strip of land not more than 3 feet wide directly over the facility or a strip of land extending not more than 1 1/2 feet on each side of the underground facility and must indicate the depth of the underground facility, if known. The underground facility operator shall complete this marking no later than 2 full business days after receipt of the notice. After the underground facility operator has marked the location of that operator's underground facilities in the proposed excavation area, the excavator is responsible for maintaining the markings at the location, unless the excavator requests remarking at the location due to obliteration, destruction or other removal of the markings. The underground facility operator shall remark the location within one business day following the receipt of a request to remark.

If the proposed excavation is of such length or size that the underground facility operator advises the excavator that the operator can not reasonably respond with respect to all the operator's underground facilities within 2 full business days, the excavator shall notify the operator of the specific location in which excavation will first be made and the operator shall respond with respect to the operator's underground facilities in that location within 2 full business days and for the remaining facilities within a reasonable time thereafter.

The system may adopt rules requiring, under certain circumstances, face-to-face meetings between excavators and underground facility operators.

Sec. 7. 23 MRSA §3360-A, sub-§4-D is enacted to read:

4-D. Abandoned or inactive facilities. Beginning on the date an owner or operator of underground facilities is required by the Public Utilities Commission to implement electronic mapping, the owner or operator shall indicate the existence of facilities abandoned or inactive after that date on its electronic mapping system and shall notify an excavator when abandoned or inactive facilities exist in the area of an excavation. If an owner or operator of an underground facility does not maintain an electronic mapping system, the owner or

operator shall notify the excavator if the operator is aware of abandoned or inactive facilities in the area of an excavation.

Sec. 8. 23 MRSA §3360-A, sub-§§5-D and 5-E are enacted to read:

5-D. Exemption; cemeteries. An excavator is exempt from the notice requirements of subsection 3 and subsection 10 for any excavation undertaken within the boundaries of a cemetery if the following procedures are followed.

A. The person responsible for operating the cemetery shall provide notice pursuant to subsections 3 and 10 identifying the entire cemetery as a potential excavation site. Owners and operators of underground facilities within the cemetery shall mark those facilities in accordance with subsections 4 and 10, as applicable. Thereafter, the person responsible for operating the cemetery shall maintain sufficient records or markings to identify the location of underground facilities within the cemetery.

B. The person responsible for operating the cemetery shall identify the location of any underground facilities within the excavation area and take appropriate action to avoid damage to the facilities.

5-E. Shoulder-grading procedure. An excavator that is a licensing authority as defined by Title 35-A, section 2502, subsection 1 or its designee may be exempt from subsection 4-C for any excavation that is shoulder-grading activity if the excavator complies with this subsection. If an excavator chooses to excavate under this subsection, all owners of underground facilities within the area of excavation must comply with this subsection.

A. The excavator shall provide notice as required by subsections 3 and 10 and the owner or operator of underground facilities shall respond as required by subsections 4 and 10.

B. The excavator shall contact each owner or operator of underground facilities within the area of proposed shoulder-grading activity and describe the scope of its proposed shoulder-grading activity, including the anticipated depth of grading.

C. The owner or operator of each underground facility shall within 3 business days determine and notify the excavator whether the depth of its facility is sufficient to avoid damage.

D. After receipt of notice provided pursuant to paragraph C, the excavator may commence its shoulder-grading activity in a manner that does not disturb the facilities indicated by the owners or operators of the underground facilities or, if a facility is located at an insufficient depth to allow the proposed shoulder-grading activity, prior to the shoulder-grading activity the licensing authority may require the owner or operator of the underground facility to lower or otherwise move its facility in accordance with applicable law and the terms of its license.

Sec. 9. 23 MRSA §3360-A, sub-§6-C, ¶D, as corrected by RR 1999, c. 2, §27, is amended to read:

D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4; or

Sec. 10. 23 MRSA §3360-A, sub-§6-C, ¶E, as enacted by PL 1999, c. 718, §11, is amended to read:

E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner; or

Sec. 11. 23 MRSA §3360-A, sub-§6-C, ¶F is enacted to read:

F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D or 5-E.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.